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Notice of Allowability	Application No.	Applicant(s)	
	10/758,140	HEFFELFINGER, DAVID M.	
	Examiner	Art Unit	
	Alessandro V. Amari	2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/22/2005.
2. ☒ The allowed claim(s) is/are 1-27.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>5/7, 5/10/04, 8/16/05</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

REASONS FOR ALLOWANCE

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. David Schneck on 12 September 2005.

The application has been amended as follows:

Amend claim 22 as follows –

22. (currently amended): The system of claim 17, wherein further including an imaging filter which is one of a plurality of imaging filters mounted on an imaging filter holder, such that said imaging filter may be selectively rotated into the pathway of the collected light beam.

Election/Restrictions

2. Claims 1 and 17 are generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 9, 10, 12, 13, 19, 23, 26 and 27, directed to the species of the first embodiment of the optical system is no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Allowable Subject Matter

3. Claims 1-27 are allowed.
4. The following is an examiner's statement of reasons for allowance:

Claim 1 is allowable over the prior art for at least the reason that the prior art fails to teach or reasonably suggest, "an imaging lens mount onto which said first imaging lens and said second imaging lens are mounted, said mount allowing a user to selectively position one of said first imaging lens or said second imaging lens in a collected light beam path, wherein any selected objective lens and imaging lens combination become a selected lens pair, wherein any selected lens pair is optically symmetrical" as set forth in the claimed combination. Claims 2-16 are also allowable based upon their dependence on claim 1.

Claim 17 is allowable over the prior art for at least the reason that the prior art fails to teach or reasonably suggest, "a imaging lens turret holding a plurality of imaging lenses, wherein each imaging lens may be selectively positioned by rotation of the turret in a pathway of collected light transmitted by said by an objective lens; wherein when each imaging lens is selectively positioned by said turret in the path of collected light, said imaging lens is held at a focal length distance from an imaging surface of said area array detector; wherein any selected pair of objective lens and imaging lens is optically symmetrical" as set forth in the claimed combination. Claims 18-27 are also allowable based upon their dependence on claim 17.

The prior art, Abe teaches an optical system comprising an illumination source (1), a sample holding stage (6), an objective lens (5), an imaging lens (8), an area array

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detector (9) and an imaging filter (7) positioned in the path of the light as shown in Figures 14 and 15. The prior art Kawasaki teaches (see Figure 1) an optical system including a first and second objective lens (8a, 8b, 8c) in a mount which allows selective positioning, and a first and second imaging lens (13a, 13b, 13c) in a mount to allow selective positioning of the imaging lens wherein any selected objective lens and imaging lens combination can become a selected lens pair. However, the prior art Kawasaki does not teach that the selected lens pair is optically symmetrical as defined in the applicant's specification on page 17, lines 13-20 and therefore there is no motivation or teaching to combine the references cited.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alessandro V. Amari whose telephone number is (571) 272-2306. The examiner can normally be reached on Monday-Friday 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ava *q-14*
08 September 2005


MARK A. ROBINSON
PRIMARY EXAMINER